

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 471

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

FOR THE DWI OVERSIGHT TASK FORCE

AN ACT

RELATING TO DRIVER'S LICENSE REVOCATIONS; PROVIDING THAT IMPLIED  
CONSENT HEARINGS MAY BE CONDUCTED TELEPHONICALLY; AMENDING A  
SECTION OF THE MOTOR VEHICLE CODE; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-112 NMSA 1978 (being Laws 1978,  
Chapter 35, Section 520, as amended) is amended to read:

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--  
NOTICE-- EFFECTIVE DATE-- HEARING-- HEARING COSTS-- REVIEW. --

A. The effective date of revocation pursuant to  
Section 66-8-111 NMSA 1978 is twenty days after notice of  
revocation or, if the person whose driver's license or privilege  
to drive is being revoked or denied requests a hearing pursuant  
to this section, the date that the department issues the order  
following that hearing. The date of notice of revocation is:

Underscored material = new  
[bracketed material] = delete

1 (1) the date the law enforcement officer serves  
2 written notice of revocation and of right to a hearing pursuant  
3 to Section 66-8-111.1 NMSA 1978; or

4 (2) in the event the results of a chemical test  
5 cannot be obtained immediately, the date notice of revocation is  
6 served by mail by the department. This notice of revocation and  
7 of right to a hearing shall be sent by certified mail and shall  
8 be deemed to have been served on the date borne by the return  
9 receipt showing delivery, refusal of the addressee to accept  
10 delivery or attempted delivery of the notice at the address  
11 obtained by the arresting law enforcement officer or on file  
12 with the department.

13 B. Within ten days after receipt of notice of  
14 revocation pursuant to Subsection A of this section, a person  
15 whose driver's license or privilege to drive is revoked or  
16 denied or the person's agent may request a hearing. The hearing  
17 request shall be made in writing and shall be accompanied by a  
18 payment of twenty-five dollars (\$25.00) or a sworn statement of  
19 indigency on a form provided by the department. A standard for  
20 indigency shall be established pursuant to regulations adopted  
21 by the department. Failure to request a hearing within ten days  
22 shall result in forfeiture of the person's right to a hearing.  
23 Any person less than eighteen years of age who fails to request  
24 a hearing within ten days shall have notice of revocation sent  
25 to his parent, guardian or custodian by the department. A date

. 113581.2

Underscored material = new  
[bracketed material] = delete

1 for the hearing shall be set by the department, if practical,  
2 within thirty days after receipt of notice of revocation. The  
3 hearing shall be held in the county in which the offense for  
4 which the person was arrested took place.

5 C. The hearing may be conducted telephonically,  
6 except when the person who requested the hearing makes a  
7 sufficient showing that witness credibility will be an issue  
8 during the hearing and that the hearing officer will be  
9 substantially aided by the opportunity to observe the witnesses'  
10 demeanor. When a person is granted an in-person hearing based  
11 upon his representation that he will present witnesses to raise  
12 credibility issues and then fails to present his witnesses  
13 without good cause, he shall be liable for the hearing officer's  
14 travel costs. Payment of the hearing officer's travel costs  
15 shall be a prerequisite to reinstatement of the person's  
16 driver's license. The payments are appropriated to the  
17 department to defray the expense of conducting hearings.

18 [~~C.~~] D. The department may postpone or continue any  
19 hearing on its own motion or upon application from the person  
20 and for good cause shown for a period not to exceed ninety days  
21 from the date of notice of revocation and provided that the  
22 department extends the validity of the temporary license for the  
23 period of the postponement or continuation.

24 [~~D.~~] E. At the hearing, the department or its agent  
25 may administer oaths and may issue subpoenas for the attendance

Underscored material = new  
[bracketed material] = delete

1 of witnesses and the production of relevant books and papers.

2 [~~E.~~] F. The hearing shall be limited to the issues:

3 (1) whether the law enforcement officer had  
4 reasonable grounds to believe that the person had been driving a  
5 motor vehicle within this state while under the influence of  
6 intoxicating liquor or drugs;

7 (2) whether the person was arrested;

8 (3) whether this hearing is held no later than  
9 ninety days after notice of revocation; [~~and either~~]

10 (4) whether the person's driver's license had  
11 been revoked previously pursuant to the provisions of the  
12 Implied Consent Act; and either

13 [~~(4)~~] (5)

14 (a) whether the person refused to submit  
15 to a test upon request of the law enforcement officer; and

16 (b) whether the law enforcement officer  
17 advised that the failure to submit to a test could result in  
18 revocation of the person's privilege to drive; or

19 [~~(5)~~] (6)

20 (a) whether the chemical test was  
21 administered pursuant to the provisions of the Implied Consent  
22 Act; and

23 (b) the test results indicated an alcohol  
24 concentration of eight one-hundredths or more in the person's  
25 blood or breath if the person is twenty-one years of age or

. 113581.2

Underscored material = new  
[bracketed material] = delete

1 older or an alcohol concentration of two one-hundredths or more  
2 in the person's blood or breath if the person is less than  
3 twenty-one years of age.

4 [F.] G. The department shall enter an order  
5 sustaining the revocation or denial of the person's driver's  
6 license or privilege to drive if the department finds that:

7 (1) the law enforcement officer had reasonable  
8 grounds to believe the driver was driving a motor vehicle while  
9 under the influence of intoxicating liquor or ~~[drug]~~ drugs;

10 (2) the person was arrested;

11 (3) this hearing is held no later than ninety  
12 days after notice of revocation; and

13 (4) the person either refused to submit to the  
14 test upon request of the law enforcement officer after the law  
15 enforcement officer advised him that his failure to submit to  
16 the test could result in the revocation of his privilege to  
17 drive or that a chemical test was administered pursuant to the  
18 provisions of the Implied Consent Act and the test results  
19 indicated an alcohol concentration of eight one-hundredths or  
20 more if the person is twenty-one years of age or older or an  
21 alcohol concentration of two one-hundredths or more if the  
22 person is less than twenty-one years of age.

23 If one or more of the elements set forth in Paragraphs (1)  
24 through (4) of this subsection are not found by the department,  
25 the person's driver's license shall not be revoked.

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[~~G.~~] H. A person adversely affected by an order of the department may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. [~~The district court, upon thirty days' written notice to the department, shall hear the case.~~] On review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the person's driver's license or privilege to drive based on the record of the administrative proceeding.

[~~H.~~] I. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian."

Section 2. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1997.

**State of New Mexico**  
**House of Representatives**

**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

February 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 471

has had it under consideration and reports same with  
recommendation that it DO NOT PASS, but that

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BILL  
471

DO PASS, and thence referred to the APPROPRIATIONS  
AND FINANCE COMMITTEE.

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Carpenter, Luna, Rios, Sanchez

Absent: None

M \H0471

Underscored material = new  
[bracketed material] = delete

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 471

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

DISCUSSION DRAFT

AN ACT

RELATING TO DRIVER'S LICENSE REVOCATIONS; PROVIDING THAT IMPLIED  
CONSENT HEARINGS MAY BE CONDUCTED TELEPHONICALLY; AMENDING A  
SECTION OF THE MOTOR VEHICLE CODE; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-112 NMSA 1978 (being Laws 1978,  
Chapter 35, Section 520, as amended) is amended to read:

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--  
NOTICE-- EFFECTIVE DATE-- HEARING-- HEARING COSTS-- REVIEW. --

A. The effective date of revocation pursuant to  
Section 66-8-111 NMSA 1978 is twenty days after notice of  
revocation or, if the person whose driver's license or privilege  
to drive is being revoked or denied requests a hearing pursuant  
to this section, the date that the department issues the order  
following that hearing. The date of notice of revocation is:

(1) the date the law enforcement officer serves  
written notice of revocation and of right to a hearing pursuant  
to Section 66-8-111.1 NMSA 1978; or

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (2) in the event the results of a chemical test  
2 cannot be obtained immediately, the date notice of revocation is  
3 served by mail by the department. This notice of revocation and  
4 of right to a hearing shall be sent by certified mail and shall  
5 be deemed to have been served on the date borne by the return  
6 receipt showing delivery, refusal of the addressee to accept  
7 delivery or attempted delivery of the notice at the address  
8 obtained by the arresting law enforcement officer or on file  
with the department.

9 B. Within ten days after receipt of notice of  
10 revocation pursuant to Subsection A of this section, a person  
11 whose driver's license or privilege to drive is revoked or  
12 denied or the person's agent may request a hearing. The hearing  
13 request shall be made in writing and shall be accompanied by a  
14 payment of twenty-five dollars (\$25.00) or a sworn statement of  
15 indigency on a form provided by the department. A standard for  
16 indigency shall be established pursuant to regulations adopted  
17 by the department. Failure to request a hearing within ten days  
18 shall result in forfeiture of the person's right to a hearing.  
19 Any person less than eighteen years of age who fails to request  
20 a hearing within ten days shall have notice of revocation sent  
21 to his parent, guardian or custodian by the department. A date  
22 for the hearing shall be set by the department, if practical,  
23 within thirty days after receipt of notice of revocation. The  
24 hearing shall be held in the county in which the offense for  
25 which the person was arrested took place.

C. The hearing may be conducted telephonically, if  
the fairness of the hearing will not be compromised. Within

1 fifteen days of receipt of notice that the hearing will be  
2 conducted telephonically, a person may object to the telephonic  
3 hearing by mailing an affidavit to the department that sets forth  
4 an adequate factual basis for the necessity of an in-person  
5 hearing. The factual basis may include an assertion that witness  
6 credibility will be an issue during the hearing and that it will be  
7 necessary for the hearing officer to evaluate witnesses' demeanor.  
8 If the person's affidavit establishes an adequate factual basis,  
9 the department shall schedule an in-person hearing. When a person  
10 is granted an in-person hearing and then fails to appear at the  
11 hearing or fails to present his witnesses without good cause, he  
12 shall be liable for the reasonable cost of the hearing.  
13 Payment of the reasonable cost of the hearing shall be a  
14 prerequisite to reinstatement of the person's driver's license.  
15 The payments are appropriated to the department to defray the  
16 expense of conducting hearings. If the department denies a  
17 person's request for an in-person hearing, the person may seek  
18 review of the department's decision within thirty days in the  
19 district court in the county in which the offense for which the  
20 person was arrested took place. On review, it is for the court to  
21 determine only whether the department's denial of an in-person  
22 hearing compromised the person's right to a fair hearing.

23 [E-] D. The department may postpone or continue any  
24 hearing on its own motion or upon application from the person and  
25 for good cause shown for a period not to exceed ninety days from  
the date of notice of revocation and provided that the department  
extends the validity of the temporary license for the period of the  
postponement or continuation.

1           ~~[D.]~~ E. At the hearing, the department or its agent may  
2 administer oaths and may issue subpoenas for the attendance of  
3 witnesses and the production of relevant books and papers.

4           ~~[E.]~~ F. The hearing shall be limited to the issues:

5                   (1) whether the law enforcement officer had  
6 reasonable grounds to believe that the person had been driving a  
7 motor vehicle within this state while under the influence of  
8 intoxicating liquor or drugs;

9                   (2) whether the person was arrested;

10                  (3) whether this hearing is held no later than  
11 ninety days after notice of revocation; ~~[and either]~~

12                   (4) whether the person's driver's license had  
13 been revoked previously pursuant to the provisions of the Implied  
14 Consent Act; and either

15                   ~~[(4)]~~ (5)

16                   (a) whether the person refused to submit to  
17 a test upon request of the law enforcement officer; and

18                   (b) whether the law enforcement officer  
19 advised that the failure to submit to a test could result in  
20 revocation of the person's privilege to drive; or

21                   ~~[(5)]~~ (6)

22                   (a) whether the chemical test was  
23 administered pursuant to the provisions of the Implied Consent Act;  
24 and

25                   (b) the test results indicated an alcohol  
concentration of eight one-hundredths or more in the person's blood  
or breath if the person is twenty-one years of age or older or an  
alcohol concentration of two one-hundredths or more in the person's

1 blood or breath if the person is less than twenty-one years of age.

2 [F.] G. The department shall enter an order sustaining  
3 the revocation or denial of the person's driver's license or  
4 privilege to drive if the department finds that:

5 (1) the law enforcement officer had reasonable  
6 grounds to believe the driver was driving a motor vehicle while  
7 under the influence of intoxicating liquor or ~~[drug]~~ drugs;

8 (2) the person was arrested;

9 (3) this hearing is held no later than ninety  
10 days after notice of revocation; and

11 (4) the person either refused to submit to the  
12 test upon request of the law enforcement officer after the law  
13 enforcement officer advised him that his failure to submit to the  
14 test could result in the revocation of his privilege to drive or  
15 that a chemical test was administered pursuant to the provisions of  
16 the Implied Consent Act and the test results indicated an alcohol  
17 concentration of eight one-hundredths or more if the person is  
18 twenty-one years of age or older or an alcohol concentration of two  
19 one-hundredths or more if the person is less than twenty-one years  
20 of age.

21 If one or more of the elements set forth in Paragraphs (1)  
22 through (4) of this subsection are not found by the department, the  
23 person's driver's license shall not be revoked.

24 [G.] H. A person adversely affected by an order of the  
25 department may seek review within thirty days in the district court  
in the county in which the offense for which the person was  
arrested took place. ~~[The district court, upon thirty days'  
written notice to the department, shall hear the case.]~~ On review,

Underscored material = new  
[bracketed material] = delete

1 it is for the court to determine only whether reasonable grounds  
2 exist for revocation or denial of the person's driver's license or  
3 privilege to drive based on the record of the administrative  
4 proceeding.

5 ~~[H.]~~ I. Any person less than eighteen years of age  
6 shall have results of his hearing forwarded by the department to  
7 his parent, guardian or custodian. "

8 Section 2. EFFECTIVE DATE. -- The effective date of the  
9 provisions of this act is July 1, 1997.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
Underscored material = new  
~~[bracketed material] = delete~~

# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

**March 5, 1997**

**Mr. Speaker:**

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom  
has been referred**

**HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BILL  
471**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

---

**Max Coll, Chairman**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 471

Page 16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 14 For 0 Against

Yes: 14

Excused: Picraux, Saavedra, Varela

Absent: None

M \H0471

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

Page 17

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 471

has had it under consideration and reports same with recommendation  
that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 471

Page 18

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Stockard, Tsosie, Vernon

Absent: None

H0471JU1

Underscored material = new  
[bracketed material] = delete